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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92043516
Party	Defendant Stich, Willi Lorenz Stich, Willi Lorenz 950 Jennings Street Bethlehem, PA 18017
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Submission	Opposition/Response to Motion
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Attachments	motion56f.reply.081005.pdf (8 pages)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

JZCHAK N. WAJCMAN dba BILL
LAWRENCE PRODUCTS and dba BILL
LAWRENCE GUITAR PICKUPS,

Petitioner,

vs.

WILLI LORENZ STICH a/k/a BILL
LAWRENCE,

Registrant/Respondent.

) Cancellation No.: 92043516

) Serial Number: 76594437

) Registration Number: 2,303,676

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)

) **In the matter of Registration No. 2,303,676**

) **Mark: BILL LAWRENCE**

) **Date Registered: December 28, 1999**

)

) **WILLI STICH'S aka BILL LAWRENCE**

) **POINTS AND AUTHORITIES IN**

) **OPPOSITION TO PETITIONER JZCHAK**

) **N. WAJCMAN d/b/a BILL LAWRENCE**

) **PRODUCTS and BILL LAWRENCE**

) **GUITAR PICKUPS MOTION FOR RULE**

) **56(F) DISCOVERY**

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1. Registrant Willi Lorenz Stich a/k/a Bill Lawrence, by his attorney, hereby replies to
Petitioner Jzchak Wajcman d/b/a Bill Lawrence Products and (sic) Bill Lawrence Guitar Pickups
for an Order, pursuant to Federal Rule of Civil Procedure 56(f) and Trademark Trial and Appeal
Board Manual of Procedure Section 528.06 refusing or continuing registrant/respondent Willi
Lorenz Stich a/k/a Bill Lawrence's motion for summary judgment.

**WILLI STICH'S aka BILL LAWRENCE POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER
JZCHAK N. WAJCMAN d/b/a BILL LAWRENCE PRODUCTS and BILL LAWRENCE GUITAR PICKUPS MOTION
FOR RULE 56(F) DISCOVERY**

1 2. The Petitioner's motion to deny or for continuance of Bill Lawrence's motion for
2 summary judgment must be denied because Petitioner Jzchak Wajcman d/b/a Bill Lawrence
3 Products and (sic) Bill Lawrence Guitar Pickups has no capacity to file this motion since there is
4 no valid dba Petitioner Jzchak Wajcman d/b/a Bill Lawrence Products and (sic) Bill Lawrence
5 Guitar Pickups. [See Pending Specific Negative Averrment].

6 3. No additional discovery is required by the Petitioner to demonstrate that it has the legal
7 capacity to sue, which is the main issue address in the pending motion for summary judgment.
8 The Petitioner may show that there is a genuine issue of material fact one whether Petitioner
9 Jzchak Wajcman d/b/a Bill Lawrence Products and (sic) Bill Lawrence Guitar Pickups is a valid
10 dba without recourse to propounding any discovery on Respondent/Registrant or receiving
11 answers to discovery already propounded.

12 4. The Petitioner does not need additional discovery in order to respond to the motion for
13 summary judgment because the essence of the summary judgment motion is that the Petitioner
14 sued under dbas that do not exist, and hence the Petitioner is not entitled to any discovery. d/b/a
15 Bill Lawrence Product and (sic) Bill Lawrence Guitar Pickups does not appear to be valid.
16 Under California law it is illegal for someone to conduct business under a fictitious business
17 name, i.e. one that does not contain his surname, without first obtaining a valid dba registration,
18 and a person doing business under an invalid dba may not maintain a court action under that
19 invalid dba.

20 5. The Petitioner states that he "is unable, without receipt of the discovery to which he is
21 entitled, to present by affidavit facts sufficient to show the existence of a genuine issues of
22 material fact and thereby oppose respondent's motion." There are many material facts relevant
23 to the Petitioner for Cancellation, but the pending motion for summary judgment involves just a
24 few, e.g. whether the Petitioner has demonstrated a valid dba and thereby a legal capacity to sue
25 and whether the Petitioner has stated facts sufficient to allege fraud.

1 6. The Petitioner has had adequate time to consult public records and his own records to
2 demonstrate the validity of his dbas. *See John Hancock Property & Casualty Ins. Co. v.*
3 *Universale Insurance Co.*, (1993, S.D.N.Y.) 147 FRD 40, 47. Since the Petitioner sued alleging
4 certain capacities, and the Respondent/Registrant has consulted public records and obtained no
5 information that confirms the existence of any dba, the pending motion for summary judgment is
6 both timely and proper.

7 7. The Respondent/Registrant has substantial justification for not responding to discovery
8 because the Petitioner has not met its burden of proving that they have any legal capacity to sue.
9 And without knowing who the Petitioner is, answering discovery is an intolerable burden and
10 would expose the Respondent/Registrant to unwanted and unnecessary disclosure of personal
11 information and trade secrets. In addition, the Respondent/Registrant has been sued in Federal
12 Court in San Diego, and Petitioner's counsel has refused to state whether or not he has a
13 professional relationship with counsel in that federal lawsuit. Respondent/Registrant should not
14 be forced to submit to discovery that has been propounded for apparently ulterior motives.

15 8. The Respondent/Registrant's response to Petitioner's first set of requests for admission,
16 served on March 14, 2005, is adequate, since any request for admission by a legal non-entity is
17 improper, and it is unclear if the discovery sought is for the USPTO proceedings or for the other
18 federal lawsuit filed in San Diego.

19 9. The Respondent/Registrant's response to Petitioner's first set of interrogatories, served
20 on March 14, 2005, is adequate, since any request for documents by a legal non-entity is
21 improper, and it is unclear if the discovery sought is for the USPTO proceedings or for the other
22 federal lawsuit filed in San Diego.

23 10. The Respondent/Registrant's response to Petitioner's first set of requests for documents,
24 served on March 14, 2005, is adequate, since any request for admission by a legal non-entity is
25

improper, and it is unclear if the discovery sought is for the USPTO proceedings or for the other federal lawsuit filed in San Diego.

11. The Respondent/Registrant second set of requests for admission were served on June 17, 2005, after the pending motion for summary judgment was filed and request for suspension of proceedings, and seeks no information needed to decide the motion for summary judgment.

12. The Respondent/Registrant second set of interrogatories were served on June 17, 2005, after the pending motion for summary judgment was filed and request for suspension of proceedings, and seeks no information needed to decide the motion for summary judgment.

13. Since the Petitioner alleges that the Registrant had no good faith belief in the validity of his ownership of the mark BILL LAWRENCE, then the Petitioner must first allege some facts to demonstrate fraud. But this fraud must be alleged with particularity, which the Petitioner fails to do in his Petition for Cancellation, and any mere allegations of fraud are not sufficient to withstand a motion for summary judgment. The burden is on the Petitioner to allege a minimum of facts, and it is improper to use discovery to obtain information from the Respondent/Registrant that the Petitioner does not already have.

14. The Petitioner alleges that the Registrant committed fraud, but he fails to allege with particularity any facts to show that the Registrant committed fraud in obtaining Registration No. 2,303,676. The discovery process is available only after the Petitioner has met his initial burden of proof by stating with particularity a cause of action for fraud, and it is unclear if the discovery sought is for the USPTO proceedings or for the other federal lawsuit filed in San Diego.

15. The motion for summary judgment is used to dispose of cases in which "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *See Celotex v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2558, 91 L. Ed. 2d 265 (1986). **Fed. R. Civ. P. 56(c)**. The Petitioner can show that there

1 is a genuine issue of material fact concerning his legal capacity to sue if he demonstrates that he
2 has a valid dba. However, a diligent search of the records of the Country Recorder for San
3 Diego County reveal no dbas in the name d/b/a Bill Lawrence Products and Bill Lawrence Guitar
4 Pickups, and the Respondent/Registrant has no documents, other than public records, regarding
5 Petitioner's dbas and their validity or invalidity.

6
7 16. The respondent/registrant has demonstrated that he is entitled to judgment as a matter of
8 law since the Petitioner has no legal capacity to sue. Hence, the Petitioner must now present
9 evidence to show that there is a genuine issue of factual dispute, i.e. that he has a valid dba.
10 Obviously, there is nothing in the records of the respondent/registrant that will be of assistance to
11 the Petitioner because the respondent/registrant is not responsible for the business paperwork of
12 the Petitioner. Hence, there is no need for further discovery until the Petitioner demonstrates a
13 legal capacity to sue.

14 17. On the other hand, whether the Petitioner has a valid dba is a matter of public record, so
15 that the respondent/registrant need not engage in discovery regarding the validity of the
16 Petitioner's dba and legal capacity to sue.

17 18. There should be no continuance of the motion for summary judgment since the Petitioner
18 must first prove his legal capacity to sue and because the respondent/registrant has no
19 information that will assist the Petitioner in demonstrating that the Petitioner is either a living
20 person or has any legal capacity to sue.

21
22 19. The pending motion for summary judgment, which is essentially equivalent to a motion
23 for judgment on the pleadings but with supporting facts, is an important test for any complaint or
24 Petition for Cancellation. Its very purpose is to cut short proceedings that fail to state a valid
25 claim, in this case the Petitioner fails to allege any facts to show that he has the legal capacity to
sue or that he has stated any facts to support allegations of fraud.

1 20. The Petitioner does not address the issues regarding his alleged dbas in the pending
2 motion for summary judgment, but all issues related to the validity of the dbas and the capacity
3 to sue can be resolved by consulting public records, which the Respondent/Registrant has done
4 but which the Petitioner is reluctant to address, and decided as a matter of law without further
5 discovery. While the Petitioner has informed the Board that “its diligent efforts to obtain
6 evidence from the moving party have been unsuccessful”, there have been no discovery
7 requested—an none denied—regarding Petitioners’ dbas. Hence, no continuance of the pending
8 “motion for summary judgment for purposes of [additional] discovery should be granted . . . as a
9 matter of course.” *See International Shortshop, Inc. v. Rally’s, Inc.*, (1991, 5th Cir.), 939 F. 2d
10 1257, 1267. See Pending Negative Specific Averment.

11 21. The Respondent/Registrant and mover for summary judgment should not have to submit
12 to the discovery requests by legal non-entities. That would impose an intolerable burden and
13 needlessly expose the personal information and trade secrets of the Respondent/Registrant to the
14 public. The motion for summary judgment is both timely and appropriate because legal non-
15 entities should not be allowed to propound discovery or file petitions for cancellation, and it is
16 unclear if the discovery sought is for the USPTO proceedings or for the other federal lawsuit
17 filed in San Diego.

18 22. Petitioner has abused the discovery process by filing the Petition for Cancellation and
19 propounding discovery without having a legal capacity to sue. It is not the
20 Respondent/Registrant who is railroading the Petitioner, but rather it is the Petitioner who is
21 railroading the Respondent/Registrant into providing information that he is not entitled to. *See*
22 *Strag v. Board of Trustees* (1995, 4th Cir.), 55 F. 3d 943.

23 23. In the event that the Board denies the motion for summary judgment or the Petitioner
24 cures his lack of capacity to sue, Respondent/Registrant requests that the discovery period be
25 reset, not because the Respondent/Registrant has not been diligent in propounding discovery, but

1 because through diligence the Respondent/Registrant found no evidence of valid dbas of the
2 Petitioner even as the original discovery period came to a close.

3 Dated: August 8, 2005

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5 Gregory Richardson
6 Attorney for Bill Lawrence
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CERTIFICATE OF SERVICE

I hereby certify that a copy of REGISTRANT'S MOTION FOR SUMMARY
JUDGMENT ON THE PETITION FOR CANCELLATION on the following attorney of record
for Petitioner, by depositing same with the United States Postal Service on
this 10th Day of August, 2005, addressed as follows:

Jay S. Kopelowitz
Kopelowitz & Associates
12702 Via Cortina, Suite 700
Del Mar, California 92014
Attorney for Petitioner

Gregory Richardson